

1 THE HONORABLE RICARDO S. MARTINEZ
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 SENIOR HOUSING ASSISTANCE GROUP,

12 Plaintiff/Counter-
Defendant,

13 v.

14 AMTAX HOLDINGS 260, LLC, et al.

15 Defendants/Counter-
Plaintiffs.

16 AMTAX HOLDINGS 260, LLC, et al.,

17 Third-Party Plaintiffs,

18 v.

19 SENIOR HOUSING ASSISTANCE
20 CORPORATION, et al.

21 Third-Party Defendants.

22 No. 2:17-cv-01115-RSM

23 **SENIOR HOUSING ASSISTANCE
24 GROUP'S MOTION TO EXCLUDE
25 RYAN TRANE TESTIMONY**

26 **NOTE ON MOTION CALENDAR:
MARCH 5, 2019**

*Senior Housing Assistance Group's
Motion to Exclude Ryan Trane Testimony
(2:17-cv-01115-RSM)*

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I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff SHAG asks the Court to exclude testimony from Ryan Trane about (1) his analysis of the offers and letters of intent received on the properties at issue and (2) the market value of the properties. This request is based on late disclosure of the proposed testimony. Plaintiff learned of the proposed testimony for the first time during the opening statement of AMTAX's counsel. Mr. Trane's analysis has not been provided to SHAG, leaving SHAG to hear it for the first time as Mr. Trane testifies in this matter. This late disclosure prejudices SHAG's ability to prepare for cross examination.

II. ANALYSIS

A. THIS PROPOSED TESTIMONY WAS NOT DISCLOSED PRIOR TO OPENING STATEMENT.

In opening statement, counsel for AMTAX stated the following about Mr. Trane's proposed testimony in this matter:

[A]s defendant's representative Ryan Trane will testify, an analysis of the offers and letters of intent on which SHAG relies would have revealed that the proposed sale prices were well below market, such that it would not have been in the best interests of the project partnerships to pursue any of them.

Unedited Transcript of Proceedings (Mar. 4, 2019) at 13:12-17. This was the first time SHAG learned of this proposed testimony.

In the Revised Pretrial Order (Dkt.149), AMTAX states it will call Mr. Trane to testify about the following subject matter:

- The LIHTC program
- AMTAX's organizational structure and its role in the LIHTC program
- The limited partnerships at issue in this litigation
- SHAG's efforts to self-trigger and unilaterally exercise its special ROFR for the projects at issue
- SHAG's efforts to hide the Global Indemnity Agreement from AMTAX
- Other matters relevant to SHAG's claims and AMTAX's unclean hands defense.

1 This disclosure does not give notice of any testimony regarding the proposed purchase prices
2 or market values of the projects at issue.

3 The disclosure in the pretrial order was consistent with Mr. Trane's deposition
4 testimony, in which he said he had not prepared an analysis of the Woodrose and Boardwalk
5 letters of intent:

6 Q. I'm handing you what's been marked as Exhibit 17. Do you recognize that?

7 A. Yes.

8 Q. What is it?

9 A. Again, I didn't read through all of it; but it appears to be the LOI that
10 Reliant sent to SHAG.

11 Q. And did you see that at the time it was provided or shortly thereafter?

12 A. I believe it was several weeks -- I would have to go back and check the
13 time, but it was several weeks after.

14 Q. Today isn't the first time that you have seen this?

15 A. That is correct.

16 Q. Okay. Did Alden Torch do any sort of analysis of this offer?

17 A. Not to my recollection.

18 Q. Okay.

19 Deposition of Ryan Trane (Aug. 8, 2018) at 49:17 – 50:9.

20 Q. I'm handing you Exhibit 18. What is that?

21 A. I believe it's the LOI or the letter of intent from Reliant to purchase
22 Woodrose.

23 . . .

24 Q. Okay. And with regard to Exhibit 18, did Alden Torch do any kind of an
25 analysis of this offering?

1 A. No. I think both of these came with -- with a SHAG cover letter that said
2 that they didn't -- they were not planning to accept these.

3 Trane Dep. at 50:12-15; 51:7-12.

4 AMTAX further describes Mr. Trane's anticipated trial testimony in its trial brief.
5 Dkt 154 at 17-18. AMTAX states that Mr. Trane will testify about his interactions with Mr.
6 Woolford in connection with Mr. Trane's efforts to obtain a copy of the Global Indemnity
7 Agreement, and the reasons why AMTAX felt it was important. Nowhere in AMTAX's trial
8 brief is there any discussion of Mr. Trane's purported analysis of the purchase offers or letters
9 of intent, or any comparison of the proposed purchase prices to market value.

10 **B. AMTAX HAS NOT DISCLOSED THE PROPOSED ANALYSIS**

11 In addition to waiting until opening statement to announce Mr. Trane's newly
12 developed analysis, AMTAX has withheld the analysis itself. SHAG has had no opportunity
13 to review it. Presumably SHAG will hear the analysis for the first time as Mr. Trane explains
14 it from the witness stand.

15 **C. SHAG IS PREJUDICED BY AMTAX'S LATE DISCLOSURE.**

16 SHAG is prejudiced by AMTAX's late disclosure of Mr. Trane's proposed analysis.
17 SHAG cannot effectively prepare for cross examination when it learns of the evidence in
18 opening statement and hears the presentation of the analysis as the witness is testifying in
19 open court.

20 **D. IMPROPER OPINION TESTIMONY**

21 Further, Mr. Trane is not permitted to offer an opinion on the value of properties under
22 the Federal Rules of Evidence. He has not been disclosed as an expert witness under Federal
23 Rule of Evidence 702. Although property owners are sometimes permitted to offer an opinion
24 as to value of property, Mr. Trane does not qualify as such an owner. As AMTAX's opening
25 statement states, "[N]either the developer general partner, nor the investor limited partner, are
26 the owner of the LIHTC property." Unedited Transcript of Proceedings (Mar. 4, 2019)

1 at 13:13-15. Additionally, Mr. Trane is even further removed from ownership of the
2 properties at issue. Mr. Trane is employed by Alden Torch. As he acknowledges in his
3 deposition, Alden Torch does not have a direct ownership interest in the properties, but rather
4 it manages a fund that “represent[s] the interests” of the AMTAX entity investor limited
5 partners. Trane Dep. at 13:7-10.

III. CONCLUSION AND RELIEF REQUESTED

7 The Revised Pretrial Order controls this case and states that it will not be amended
8 without agreement of the parties except “to prevent manifest injustice.” Dkt. 149 at 14. The
9 Pretrial Order should be enforced. Plaintiff SHAG respectfully requests that Mr. Trane’s
10 testimony be limited to subject matters that were properly disclosed.

DATED this 5th day of March, 2019.

HILLIS CLARK MARTIN & PETERSON P.S.

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Attorneys for Senior Housing Assistance Group and
Senior Housing Assistance Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

DATED this 5th day of March 2019, at Seattle, Washington.

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